

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATHANEAL TAYLOR,

Plaintiff,

No. 03-73595

v

HON. PAUL BORMAN

JAMES FISCHER, DWIGHT PEARSON,
GREG EDWARDS, SGT KINNEY,
EDWARD VIVERETTE, ERNEST
WILSON, ARTHUR MILLER, THOMAS
KEYS and BARBARA SIMON,

Defendants.

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U.S. DIST. COURT CLERK
EAST. DIST. MICHIGAN
DETROIT

Christopher J. Trainer (P42449)
Attorney for Plaintiff

Paula L. Cole (P31888)
Attorney For Def Fischer, Pearson, Edwards,
Kinney, Wilson, Miller, Keys And Simon

Margaret A. Nelson (P30342)
Attorney for Defendant Viverette
Michigan Department of Attorney General
Public Employment, Elections & Tort Div.
P.O. Box 30736
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(517) 373-6434

**DEFENDANT EDWARD VIVERETTE'S ANSWER TO
PLAINTIFF'S FIRST AMENDED COMPLAINT**

Defendant Edward Viverette, through his attorneys, Michael A. Cox, Attorney General for Michigan, and Margaret A. Nelson, Assistant Attorney General, answer plaintiff's complaint as follows:

1. Plaintiff neither admits nor denies the allegations in paragraph 1 being without sufficient information to formulate a response.
2. Admitted on information and belief.

3. Defendant denies he is employed by the City of Detroit as a police officer for the reason it is not true. Defendant was and is employed by the Michigan State Police and at all times relevant to this complaint was acting under color of law within the scope of his duties and responsibilities with the Michigan State Police. Defendant neither admits nor denies the allegations in paragraph 3 as they pertain to the remaining defendants being without sufficient information to formulate a response.

4. Defendant denies the allegations in paragraph 4 as they pertain to him for the reason they are not true. Defendant was and is employed by the Michigan State Police and was acting within the scope of his employment and under color of law with that agency. Defendant neither admits nor denies the allegations in paragraph 4 as they pertain to the remaining defendants being without sufficient information to formulate a response.

5. Defendant neither admits nor denies the allegations in paragraph 5 being without sufficient information to formulate a response.

6. Defendant denies the allegations in paragraph 6 for the reason they are not true. Defendant states in further answer he acted pursuant to the laws of the State of Michigan and the policies and procedures of the Michigan State Police.

7. Defendant neither admits nor denies the allegations in paragraph 7 being without sufficient information to formulate a response.

8. Defendant neither admits nor denies the allegations in paragraph 8 being without sufficient information to formulate a response.

FACTS

9. Defendant incorporates paragraph 1 through 8 of this Answer.

10. Defendant neither admits nor denies the allegations in paragraph 10 being without sufficient information to formulate a response.

11. Defendant neither admits nor denies the allegations in paragraph 11 being without sufficient information to formulate a response.

12. Defendant neither admits nor denies the allegations in paragraph 12 being without sufficient information to formulate a response.

13. Defendant denies the allegations in paragraph 13 as they pertain to his for the reason they are not true. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

14. Defendant denies the allegations in paragraph 14 as they pertain to him for the reason they are not true. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

15. Defendant denies the allegations in paragraph 15 as they pertain to him for the reason they are not true. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

16. Defendant denies the allegations in paragraph 16 as they pertain to him for the reason they are not true. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

17. Defendant denies the allegations in paragraph 17 as they pertain to him for the reason they are not true. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

18. Defendant denies the allegations in paragraph 18 being without sufficient information to formulate a response. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

19. Defendant denies the allegations in paragraph 19 as they pertain to him for the reason they are not true. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

20. Defendant neither admits nor denies the allegations in paragraph 20 being without sufficient information to formulate a response.

21. Defendant denies the allegations as they pertain to him for the reason they are not true. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

22. Defendant neither admits nor denies the allegations in paragraph 22 being without sufficient information to formulate a response.

23. Defendant neither admits nor denies the allegations in paragraph 23 being without sufficient information to formulate a response.

24. Defendant denies the allegations as they pertain to him for the reason they are not true. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

25. Defendant neither admits nor denies the allegations in paragraph 25 being without sufficient information to formulate a response.

26. Defendant neither admits nor denies the allegations in paragraph 26 being without sufficient information to formulate a response.

27. Defendant neither admits nor denies the allegations in paragraph 27 being without sufficient information to formulate a response.

28. Defendant neither admits nor denies the allegations in paragraph 28 being without sufficient information to formulate a response.

29. Defendant neither admits nor denies the allegations in paragraph 29 being without sufficient information to formulate a response.

30. Defendant neither admits nor denies the allegations in paragraph 30 being without sufficient information to formulate a response.

31. Defendant neither admits nor denies the allegations in paragraph 31 being without sufficient information to formulate a response.

32. Defendant denies the allegations as they pertain to him for the reason they are not true. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

33. Defendant neither admits nor denies the allegations in paragraph 33 being without sufficient information to formulate a response.

34. Defendant neither admits nor denies the allegations in paragraph 34 being without sufficient information to formulate a response.

35. Defendant neither admits nor denies the allegations in paragraph 35 being without sufficient information to formulate a response.

36. Defendant neither admits nor denies the allegations in paragraph 36 being without sufficient information to formulate a response.

37. Defendant neither admits nor denies the allegations in paragraph 37 being without sufficient information to formulate a response.

38. Defendant neither admits nor denies the allegations in paragraph 38 being without sufficient information to formulate a response.

39. Defendant neither admits nor denies the allegations in paragraph 39 being without sufficient information to formulate a response.

40. Defendant denies the allegations in paragraph 40 as they pertain to him for the reason they are not true. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

41. Defendant neither admits nor denies the allegations in paragraph 41 being without sufficient information to formulate a response.

42. Defendant neither admits nor denies the allegations in paragraph 42 being without sufficient information to formulate a response.

43. Defendant neither admits nor denies the allegations in paragraph 43 being without sufficient information to formulate a response.

44. Defendant neither admits nor denies the allegations in paragraph 44 being without sufficient information to formulate a response.

45. Defendant neither admits nor denies the allegations in paragraph 45 being without sufficient information to formulate a response.

46. Defendant neither admits nor denies the allegations in paragraph 46 being without sufficient information to formulate a response.

47. Defendant neither admits nor denies the allegations in paragraph 47 being without sufficient information to formulate a response.

48. Defendant neither admits nor denies the allegations in paragraph 48 being without sufficient information to formulate a response.

49. Defendant neither admits nor denies the allegations in paragraph 49 being without sufficient information to formulate a response.

50. Defendant denies the allegations in paragraph 50 as they pertain to him for the reason they are not true. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

51. Defendant denies the allegations in paragraph 51 as they pertain to him for the reason they are not true. Defendant neither admits nor denies the allegations as they pertain to the remaining defendants being without sufficient information to formulate a response.

52. Defendant neither admits nor denies the allegations in paragraph 52 being without sufficient information to formulate a response.

53. Defendant neither admits nor denies the allegations in paragraph 53 being without sufficient information to formulate a response.

54. Defendant neither admits nor denies the allegations in paragraph 54 being without sufficient information to formulate a response.

55. Defendant neither admits nor denies the allegations in paragraph 55 being without sufficient information to formulate a response.

56. Defendant neither admits nor denies the allegations in paragraph 56 being without sufficient information to formulate a response.

57. Defendant neither admits nor denies the allegations in paragraph 57 being without sufficient information to formulate a response.

58. Defendant neither admits nor denies the allegations in paragraph 58 being without sufficient information to formulate a response.

59. Defendant neither admits nor denies the allegations in paragraph 59 being without sufficient information to formulate a response.

60. Defendant neither admits nor denies the allegations in paragraph 60 being without sufficient information to formulate a response.

61. Defendant neither admits nor denies the allegations in paragraph 61 being without sufficient information to formulate a response.

62. Defendant neither admits nor denies the allegations in paragraph 62 being without sufficient information to formulate a response.

63. Defendant neither admits nor denies the allegations in paragraph 63 being without sufficient information to formulate a response.

64. Defendant neither admits nor denies the allegations in paragraph 64 being without sufficient information to formulate a response.

65. Defendant neither admits nor denies the allegations in paragraph 65 being without sufficient information to formulate a response.

66. Defendant neither admits nor denies the allegations in paragraph 66 being without sufficient information to formulate a response.

67. Defendant neither admits nor denies the allegations in paragraph 67 being without sufficient information to formulate a response.

COUNT I

68. Defendant incorporates paragraph 1 through 67 of this Answer.

69. Admitted.

70. Defendant denies the allegations in paragraph 70 for the reason they are not true.

71. Defendant denies the allegations in paragraph 71 for the reason they are not true.

72. Defendant denies the allegations in paragraph 72 for the reason they are not true.

73. Defendant denies the allegations in paragraph 73 for the reason they are not true.

74. Defendant denies the allegations in paragraph 74 for the reason they are not true.

75. Defendant denies the allegations in paragraph 75 for the reason they are not true.

76. Defendant denies the allegation in paragraph 76 for the reason they are not true.

COUNT II

77. Defendant incorporates paragraphs 1 through 76 of this Answer.

78. Defendant denies the allegations in paragraph 78 for the reason they are not true.

79. Defendant denies the allegations in paragraph 79 for the reason they are not true.

80. Defendant neither admits nor denies the allegations in paragraph 80 being without sufficient information to formulate a response.

81. Defendant neither admits nor denies the allegations in paragraph 81 being without sufficient information to formulate a response.

82. Defendant denies the allegations in paragraph 82 for the reason they are not true.

83. Defendant denies the allegations in paragraph 83 for the reason they are not true.

84. Defendant denies the allegations in paragraph 84 for the reason they are not true.

COUNT III

85. Defendant incorporates paragraphs 1 through 84 of this Answer.

86. Defendant neither admits nor denies the allegations in paragraph 86 being without sufficient information to formulate a response.

87. Defendant denies the allegations in paragraph 87 for the reason they are not true.

88. Defendant denies the allegations in paragraph 88 for the reason they are not true.

89. Defendant denies the allegations in paragraph 89 for the reason they are not true.

90. Defendant neither admits nor denies the allegations in paragraph 90 pertaining to plaintiff's arraignment being without sufficient information to formulate a response. Defendant denies the remaining allegations in paragraph 90 for the reason they are not true.

91. Defendant denies the allegations in paragraph 91 for the reason they are not true.

92. Defendant denies the allegations in paragraph 92 for the reason they are not true.

93. Defendant neither admits nor denies the allegations in paragraph 93 being without sufficient information to formulate a response.

94. Defendant neither admits nor denies the allegations in paragraph 94 being without sufficient information to formulate a response.

95. Defendant neither admits nor denies the allegations in paragraph 95 being without sufficient information to formulate a response.

96. Defendant neither admits nor denies the allegations in paragraph 96 being without sufficient information to formulate a response.

97. Defendant denies the allegations in paragraph 97 for the reason they are not true.

98. Defendant denies the allegations in paragraph 98 for the reason they are not true.

COUNT IV

99. Defendant incorporates paragraphs 1 through 98 of this Answer.

100. Defendant neither admits nor denies the allegations in paragraph 100 being without sufficient information to formulate are response.

101. Defendant neither admits nor denies the allegations in paragraph 101 being without sufficient information to formulate a response.

102. Defendant neither admits nor denies the allegations in paragraph 102 being without sufficient information to formulate a response.

103. Defendant denies the allegations in paragraph 103 for the reason they are not true.

104. Defendant neither admits nor denies the allegations in paragraph 104 being without sufficient information to formulate a response.

COUNT V

105. Defendant neither admits nor denies the allegations in paragraph 105 being without sufficient information to formulate a response.

106. Defendant neither admits nor denies the allegations in paragraph 106 being without sufficient information to formulate a response.

107. Defendant denies the allegations in paragraph 107 for the reason they are based on incorrect statements of law and are, therefore, not true.

108. Defendant denies the allegations in paragraph 108 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

109. Defendant denies the allegations in paragraph 109 for the reason they are based on incorrect statements of law and fact are, therefore, are not true.

110. Defendant denies the allegations in paragraph 110 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

COUNT VI

111. Defendant incorporates paragraphs 1 through 110 of this Answer.

112. Defendant denies the allegations in paragraph 112 for the reason they are based on incorrect statements of law and fact and, therefore, are not true.

113. Defendant denies the allegations in paragraph 113 for the reason they are not true.

114. Defendant neither admits nor denies the allegations in paragraph 114 being without sufficient information to formulate a response.

115. Defendant denies the allegations in paragraph 115 for the reason they are not true.

116. Defendant denies the allegations in paragraph 116 for the reason they are not true.

117. Defendant denies the allegations in paragraph 117 for the reason they are not true

COUNT VII

118. Defendant incorporates paragraphs 1 through 118 of this Answer.

119. Defendant denies the allegations in paragraph 119 for the reason they are not true.

120. Defendant denies the allegations in paragraph 120 for the reason they are not true.

121. Defendant denies the allegations in paragraph 121 for the reason they are not true.

122. Defendant denies the allegations in paragraph 122 for the reason they are not true.

123. Defendant neither admits nor denies the allegations in paragraph 123 being
without sufficient information to formulate a response.

124. Defendant denies the allegations in paragraph 124 for the reason they are not true.

125. Defendant denies the allegations in paragraph 125 for the reason they are not true.

126. Defendant neither admits nor denies the allegations in paragraph 126 being
without sufficient information to formulate a response.

COUNT VIII

127. Defendant incorporates paragraphs 1 through 126 of this Answer.

128. Defendant denies the allegations in paragraph 128 for the reason it is not true.

129. Defendant denies the allegations in paragraph 129 for the reason they are not true.

130. Defendant denies the allegations in paragraph 130 for the reason they are not true.

131. Defendant denies the allegations in paragraph 131 for the reason they are not true.

132. Defendant neither admits nor denies the allegations in paragraph 132 being
without sufficient information to formulate a response.

COUNT IX

133. Defendant incorporates paragraphs 1 through 132 of this Answer.

134. Defendant denies the allegations in paragraph 134 for the reason they are not true.

135. Defendant neither admits nor denies the allegations in paragraph 135 being without sufficient information to formulate a response.

136. Defendant denies the allegations in paragraph 136 for the reason they are not true.

137. Defendant denies the allegations in paragraph 137 for the reason they are not true.

138. Defendant neither admits nor denies the allegations in paragraph 138 for the reason they are not true.

COUNT X

139. Defendant incorporates paragraphs 1 through 138 of this Answer.

140. Defendant denies the allegations in paragraph 140 for the reason they are not true.

141. Defendant denies the allegations in paragraph 141 for the reason they are not true.

142. Defendant denies the allegations in paragraph 142 for the reason they are not true.

143. Defendant denies the allegations in paragraph 143 for the reason they are not true.

144. Defendant denies the allegations in paragraph 144 for the reason they are not true.

145. Defendant denies the allegations in paragraph 145 for the reason they are not true.

146. Defendant denies the allegations in paragraph 146 for the reason they are not true.

COUNT XI

147. Defendant incorporates paragraphs 1 through 146 of this Answer.

148. Defendant neither admits nor denies the allegations in paragraph 148 being without sufficient information to formulate a response.

149. Defendant neither admits nor denies the allegations in paragraph 149 and its subparts (a) through (h) being without sufficient information to formulate a response.

150. Defendant denies the allegations in paragraph 150 for the reason they are not true.

151. Defendant denies the allegations in paragraph 151 for the reason they are not true.

152. Defendant neither admits nor denies the allegations in paragraph 152 being without sufficient information to formulate a response.

COUNT XII

153. Defendant incorporates paragraphs 1 through 152 of this Answer.

154. Defendant denies the allegations in paragraph 1 through 153 for the reason it is not true.

155. Defendant denies the allegations in paragraph 155 for the reason they are not true.

156. Defendant denies the allegations in paragraph 156 for the reason they are not true.

157. Defendant denies the allegations in paragraph 157 for the reason they are not true.

158. Defendant denies the allegations in paragraph 158 for the reason they are not true.

159. Defendant denies the allegations in paragraph 159 for the reason they are not true.

160. Defendant neither admits nor denies the allegations in paragraph 160 being without sufficient information to formulate a response.

COUNT XIII

161. Defendant incorporates paragraphs 1 through 160 of this Answer.

162. Defendant denies the allegations in paragraph 162 for the reason they are not true.

163. Defendant denies the allegations in paragraph 163 for the reason they are not true.

164. Defendant denies the allegations in paragraph 164 for the reason they are not true.

165. Defendant denies the allegations in paragraph 165 for the reason they are not true.

166. Defendant denies the allegations in paragraph 166 for the reason they are not true.

167. Defendant denies the allegations in paragraph 167 for the reason they are not true.

168. Defendant neither admits nor denies the allegations in paragraph 168 being without sufficient information to formulate a response.

169. Defendant denies the allegations in paragraph 169 for the reason they are not true.

170. Defendant neither admits nor denies the allegations in paragraph 170 being without sufficient information to formulate a response.

171. Defendant neither admits nor denies the allegations in paragraph 171 being without sufficient information to formulate a response.

172. Defendant neither admits nor denies the allegations in paragraph 172 being without sufficient information to formulate a response.

COUNT XIV

173. Defendant incorporates paragraphs 1 through 172 of this Answer.

173. Defendant neither admits nor denies the allegations in paragraph 173 being without sufficient information to formulate a response.

174. Defendant neither admits nor denies the allegations in paragraph 174 being without sufficient information to formulate a response.

175. Defendant neither admits nor denies the allegations in paragraph 175 being without sufficient information to formulate a response.

176. Defendant neither admits nor denies the allegations in paragraph 176 being without sufficient information to formulate a response.

177. Defendant neither admits nor denies the allegations in paragraph 177 being without sufficient information to formulate a response.

178. Defendant neither admits nor denies the allegations in paragraph 178 being without sufficient information to formulate a response.

179. Defendant neither admits nor denies the allegations in paragraph 179 being without sufficient information to formulate a response.

180. Defendant neither admits nor denies the allegations in paragraph 180 being without sufficient information to formulate a response.

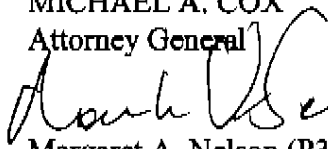
181. Defendant neither admits nor denies the allegations in paragraph 181 being without sufficient information to formulate a response.

182. Defendant neither admits nor denies the allegations in paragraph 182 being without sufficient information to formulate a response.

Defendant prays the court denies the relief requested by plaintiff, enters its judgment of no cause of action and dismisses this complaint with prejudice.

Respectfully submitted,

MICHAEL A. COX
Attorney General


Margaret A. Nelson (P30342)
Assistant Attorney General
Public Employment, Elections
& Tort Defense Division

pd 3576
for Mr

Dated: February 3, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATHANEAL TAYLOR,

Plaintiff,

No. 03-73595

v

HON. PAUL BORMAN

JAMES FISCHER, DWIGHT PEARSON,
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Attorney for Defendant Viverette
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(517) 373-6434

DEFENDANT EDWARD VIVERETTE'S AFFIRMATIVE DEFENSES


Defendant Edward Viverette, through his attorneys, Michael A. Cox, Attorney General for Michigan, and Margaret A. Nelson, Assistant Attorney General, asserts the following affirmative defenses to plaintiff's complaint:

1. Plaintiff has failed to state a claim upon which relief may be granted.
2. Some or all of plaintiff's claims may be barred by the applicable statute of limitations.

3. Some or all of plaintiff's claims may be collaterally estopped.
4. Plaintiff's federal claims may be barred by the doctrine of qualified immunity.
5. Plaintiff's federal claims may be barred by absolute immunity to the extent they rely on testimony or sworn statements to a court by the defendant.
6. Plaintiff's state law claims may be barred by immunity granted defendant under MCL 691.1407(2).
7. Plaintiff's state law claims may be barred by absolute witness immunity to the extent they rely on testimony or sworn statements to a court by the defendant.
8. Defendant's conduct is privileged and may not form the basis for liability.
9. Plaintiff's federal claims are barred by Eleventh Amendment jurisdictional immunity as the claims are asserted only against defendant's official capacity as a state officer.
10. Defendant is sued only in his official capacity and, therefore, is not a "person" within the meaning of 42 USC 1983.
11. Defendant reserves the right to assert additional affirmative defenses as they become known during discovery.

Respectfully submitted,

MICHAEL A. COX
Attorney General


Margaret A. Nelson (P30342)
Assistant Attorney General
Public Employment, Elections
& Tort Defense Division

#23576
for WK

Dated: February 3, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
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NATHANEAL TAYLOR,

Plaintiff,

v

JAMES FISCHER, DWIGHT PEARSON,
GREG EDWARDS, SGT KINNEY,
EDWARD VIVERETTE, ERNEST
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KEYS and BARBARA SIMON,

Defendants.

No. 03-73595

HON. PAUL BORMAN

PROOF OF SERVICE

Christopher J. Trainor (P42449)
Attorney for Plaintiff

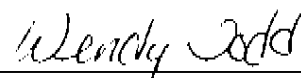
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Attorney For Def Fischer, Pearson, Edwards,
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Margaret A. Nelson (P30342)
Attorney for Defendant Viverette
Michigan Department of Attorney General
Public Employment, Elections & Tort Div.

The undersigned certifies that a copy of Defendant Viverette's Answer to First Amended Complaint and Affirmative Defenses, was served upon the following named individuals, by mailing same to them at their respective addresses with first class postage fully prepaid thereon, on the 3rd day of February, 2004.

Paula Cole
City Detroit - Law Dept
660 Woodward Ave Ste 1650
Detroit, MI 48226-3519

Christopher J. Trainor
McCall & Trainor
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Wendy Todd

U.S. DIST. COURT CLERK
EAST DIST. MICHIGAN
DETROIT

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